



THE OFFICE OF THE **DATA PROTECTION COMMISSIONER**

The Data Protection (Bailiwick of Guernsey) Law, 2017 ("the **Law**")

Special Category Data

At a glance

- [Special category data](#) is personal data which the Law recognises as more sensitive, and is therefore given higher levels of protection.
 - In order to lawfully process special category data, you must identify a lawful processing condition from either Part II or Part III of Schedule 2 of the Law.
 - You must determine and document the condition for processing special category data before you begin any processing under the Law.
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What is special category data?

"Special Category Data" means –

- personal data revealing an individual's –
 - Racial or ethnic origin
 - Political opinion
 - Religious or philosophical belief
 - Trade union membership
- genetic data
- biometric data
- health data
- personal data concerning an individual's sex life or sexual orientation
- criminal data

What's new?

Special category data is broadly similar to the concept of sensitive personal data under the 2001 Law. The requirement to identify a specific condition for processing this type of data is also very similar. The standards that apply to ensure compliance with the Law remain broadly similar but are enhanced in a number of areas. It is important to ensure you read, understand and act upon the new conditions that apply.

What's different about special category data?

It is recognised that this type of data could create more significant risks to a person's fundamental rights and freedoms, for example, by putting those persons at risk of unlawful discrimination.

What are the conditions for processing special category data?

The conditions are listed in Parts II and III of Schedule 2 which are replicated below:-

Part II

- The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.
- The processing is necessary for the controller to exercise any right or power, or perform or comply with any duty, conferred or imposed on the controller by an enactment.
- The processing is necessary in order to comply with an order or a judgment of a court or tribunal having the force of law in the Bailiwick.
- (a) The processing is necessary for a health or social care purpose and is undertaken by –
 - (i) a health professional, or
 - (ii) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if the person were a health professional.
- (b) In subparagraph (a) –
 - "health or social care purpose" includes the purpose of –
 - (i) preventative or occupational medicine,

- (ii) the assessment of the working capacity of an employee or worker,
 - (iii) medical diagnosis,
 - (iv) the provision of medical, health or social care or treatment, or
 - (v) the management of medical, health or social care systems and services.
- (a) The processing –
 - (i) is necessary for reasons of public health, for example –
 - (A) for protection against serious threats to public health,
 - or
 - (B) to ensure high standards of quality and safety for health care, medicinal products or medical devices, and
 - (ii) is carried out with appropriate safeguards for the significant interests of data subjects.
- (b) In subparagraph (a)(i)(B) –
 - "medical device" means –
 - (i) any medical device, within the meaning of Article 1(2)(a) of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices, or
 - (ii) any accessory, within the meaning of Article 1(2)(b) of that Council Directive, and
 - "medicinal product" has the meaning given by section 133 of the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008
- The processing is necessary –
 - (a) for the purpose of, or in connection with –
 - (i) any legal proceedings (including prospective legal proceedings), or
 - (ii) the discharge of any functions of a court or tribunal acting in its judicial capacity,
 - (b) for the purpose of obtaining legal advice, or
 - (c) otherwise for the purposes of establishing, exercising or defending legal rights.
- The processing is necessary for –
 - (a) the administration of justice, or
 - (b) the exercise of any function of the Crown, a Law Officer of the Crown, the States or a public committee.

- The processing –
 - (a) is in the context of the legitimate activities of any person which –
 - (i) is not an individual,
 - (ii) is not established or conducted for profit, and
 - (iii) exists for political, philosophical, religious or trade-union purposes,
 - (b) is carried out with appropriate safeguards for the significant interests of data subjects,
 - (c) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes, and
 - (d) does not involve disclosure of the personal data to a third party without the consent of the data subject.
- The processing is necessary for a historical or scientific purpose.
- The following condition is satisfied if the condition in subparagraph (a) is satisfied, subject to subparagraphs (b) and (c) –
 - (a) The personal data processed is of a category specified in the left-hand column of the table below, and the processing is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between the groups of people specified in the righthand column of that table in relation to each category of personal data, with a view to enabling such equality to be promoted or maintained:

Category of personal data	Groups of people (in relation to a category of personal data)
Personal data revealing racial or ethnic origin	People of different racial or ethnic origin
Personal data revealing religious or philosophical beliefs	People holding different religious or philosophical beliefs
Health data	People with different states of health
Personal data concerning an individual's sexual orientation	People of different sexual orientation

- (b) Processing does not satisfy the condition in subparagraph (a) if it is carried out–
 - (i) in order to make a decision, or facilitate or allow a decision to be made, with respect to a particular data subject, or
 - (ii) in such a way that substantial damage is, or is likely to be, caused to any data subject.

(c) Processing does not satisfy the condition in subparagraph (a) if—

- (i) a data subject has given notice in writing to the controller requiring the controller not to process the personal data, and has not given notice in writing withdrawing that requirement,
- (ii) the notice gave the controller a reasonable period in which to stop processing such data, and
- (iii) that period has ended.

- The processing is –

(a) authorised by regulations made by the Committee for this purpose and carried out in accordance with those regulations, or

(b) authorised or required by any other enactment and carried out in accordance with the enactment.

Part III

- The data subject has given explicit consent to the processing of the personal data for the purpose for which it is processed.
- The processing is necessary to protect the vital interests of the data subject or any other individual who is a third party, and –

(a) the data subject is physically or legally incapable of giving consent, or

(b) the controller cannot reasonably be expected to obtain the explicit consent of the data subject.

Checklist

- We have identified all special category data that we process or intend to process.
- We have identified and documented which condition we are relying on to ensure the lawfulness of the processing.
- We have considered the management of special category data and how it impacts other obligations such as security, impact assessments and breach handling.